These are the tentative rulings for civil law and motion matters set for Tuesday, February 24, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, February 23, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances are governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

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1. M-CV-0062181 Kaniu, Sam G. vs. Lee, Darla

The Motion to be Relieved as Counsel by Christopher L. Kreeger, Esq., Rosenthal & Kreeger, LLP, is denied without prejudice.

This is the second attempt by counsel to withdraw as counsel of record. This present motion was again served with insufficient notice time. Code Civ. Proc. § 1005(b). The motion was filed only two court days prior to the scheduled hearing date, in violation of Code of Civil Procedure section 1005(b) and California Rules of Court, rule 3.1300(a). Further, although the declaration of counsel states that the client's last known address was confirmed within the past 30 days by telephone, the remainder of the declaration and the notice make clear that counsel has received no response to several attempts to reach plaintiff by telephone or in writing. For this additional reason, proper service has not been established.

2. S-CV-0027567 Tolani, Tony, et al vs. Highlands Hotel Co., LLC, et al

Defendant International Fidelity Insurance Company's (IFIC's) Motion to Strike or Tax Costs on Appeal is granted in part.

Plaintiff Ludek Fabinger (Fabinger) had judgment entered in his favor in this action on July 19, 2012. IFIC appealed the judgment, and the court of appeal affirmed the judgment with minor modifications on August 18, 2014. IFIC then filed a petition for review to the California Supreme Court, which was denied on November 17, 2014. Fabinger's deadline to file a memorandum of costs following issuance of the remittitur was December 29, 2014. Fabinger

filed a memorandum of costs on December 29, 2014. Fabinger then filed an "amended" memorandum of costs on January 7, 2015.

IFIC argues that the January 7 "amended" memorandum of costs must be stricken as untimely. In opposition, Fabinger argues that he is entitled to relief pursuant to Code of Civil Procedure section 473(b). A party who is awarded costs on appeal, but fails to file and serve the costs memorandum within the prescribed time period, waives such costs. *Moulin Electric Corp. v. Roach* (1981) 120 Cal.App.3d 1067, 1070. While relief pursuant to Code of Civil Procedure section 473(b) is available (*Id.* at 1070), in this case, Fabinger fails to make any evidentiary showing that would entitle him to such relief. The opposition is not supported by declaration of counsel, and the court is directed to review either the Notice of Errata filed by Fabinger on December 30, 2014, or the Application for Extension of Time filed by Fabinger on December 29, 2014. The Application for Extension of Time does not appear in the court's file, and it appears it was rejected for filing. Further, the Notice of Errata is also not supported by declaration of counsel. As there is no admissible evidence in the court's file establishing mistake, inadvertence, surprise or excusable neglect of Fabinger or his counsel, the request for relief from waiver is denied, and the memorandum of costs filed January 7, 2015 is stricken.

However, the court will consider the memorandum of costs timely filed on December 29, 2014. The verified memorandum of costs establishes a prima facie case for recovery of the costs sought. *Alan S. v. Superior Court* (2009) 172 Cal.App.4th 238, 260-261. In response to the motion to tax, Fabinger argues that he is entitled to recoverable costs arising not only from the appeal in this action, Case No. SCV-27567, but also appeals arising out of the related action of Placer County Superior Court Case No. SCV-32679. While it is true that the subject appeals sought relief related to the appeal in this action, Case Nos. C074433 and C074340 both clearly arose from the trial court's order in Case No. SCV-32679. Accordingly, plaintiff is not entitled to recover such costs in the instant case.

Upon review of the supporting documentation provided by Fabinger in opposition to the motion, the court finds that filing fees in the amount of $390 are proper and should be awarded. However, with respect to costs for printing of briefs, or transmission and filing of record, briefs, and other papers, Fabinger has presented invoices which relate not only to this action, but also to the appeals identified as Case Nos. C074433 and C074340, and does not delineate between the three appeals. The court is unable to discern which of the invoices relate only to the appeal in this action, and as a result, cannot determine the amount that may be properly awardable to Fabinger with respect to costs incurred in the subject appeal.

Based on the foregoing, Fabinger is awarded costs in the total amount of $390. The motion to strike or tax costs on appeal is otherwise granted.

3. S-CV-0031959 Spann, William vs. CBM-96, LLC, et al.

The court has considered the advisory rulings of discovery referee Louis J. Anapolsky (Discovery Referee) with respect to (1) John P. Casper's Motion to Compel Further Responses to Special Interrogatories to Edward Mackay (Set One); (2) Edward Mackay's Motion for Protective Order; and (3) plaintiff's Motion for Protective Order. The court has also considered

John P. Casper's (Casper's) brief in support of the advisory rulings and Edward Mackay (Mackay), Ronald Bettencourt and William Spann's (Spann's) joint objections to the advisory rulings.

Within the advisory rulings, the Discovery Referee considered each of the hundreds of discovery requests at issue, and addressed each objection asserted by the responding parties. The Discovery Referee rejected responding parties' argument that this case, involving business transactions, real estate developments and projects, and numerous written and oral agreements concerning said real estate projects, spanning 34 years, was not sufficiently complex to warrant more than 35 special interrogatories per party. The Discovery Referee noted that the burden and expense inherent in responding to the discovery was warranted by serious allegations of misconduct leveled against Casper. The Discovery Referee rejected the responding parties' arguments that Casper should be ordered to take oral depositions of the responding parties in lieu of requiring them to respond to the discovery. Ultimately, upon review of each interrogatory at issue, the Discovery Referee found that Spann's objections were warranted as to 156 out of 310 special interrogatories, and that Mackay's objections were warranted as to 79 out of 233 special interrogatories.

The Discovery Referee also carefully considered the parties' allegations of misconduct and requests for sanctions, and determined that each attorney had made and opposed the motions with substantial justification, and that other circumstances existed making the imposition of sanctions unjust. The referee also noted that as he had independently reviewed each discovery request and determined that the numerical quantity was warranted, the ultimate utility and cost involved in holding another evidentiary hearing regarding whether Casper had threatened to bury other parties with endless discovery, as requested by Spann and Mackay, was not justified.

The Discovery Referee carefully considered each objection and discovery request at issue, and applied the correct standards and law to his recommendations. Having read and considered the Discovery Referee's advisory rulings, as well as the briefings in support of and in opposition to such rulings, the court approves and adopts all recommendations and findings contained within the Discovery Referee's advisory rulings, and orders the parties to comply therewith.

4. S-CV-0033995 Lowden, Richard, et al. vs. Van Wagner, John, et al

The Motion to Compel Further Responses was dropped by the moving party.

5. S-CV-0034068 Walsh, Liliya, et al vs. Federal Nat'l Mortgage Ass'n., et al

In light of the motion for reconsideration filed with respect to bankruptcy proceedings involving the plaintiffs, the Demurrer to Second Amended Complaint, Motion to Strike and Motion to Expunge Lis Pendens are continued to **May 5, 2015 at 8:30 a.m. in Department 32.** It is requested that counsel for defendants file a declaration at least five days prior to the hearing to provide a status update to the court regarding the bankruptcy proceedings.

6. S-CV-0034118 Mejia, Marto vs. Roofline, Inc., et al

The Motion to Extend Time to Complete Discovery was dropped by the moving party.

7. S-CV-0034158 Mendoza, Eric vs. The Gar Wood Restaurant

This tentative ruling is issued by the Honorable Charles D. Wachob. If oral argument is requested, it shall be heard on February 24, 2015 at 8:30 a.m. in Department 42.

Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted as to Exhibit A. Defendant's request for judicial notice is denied as to Exhibit B, as the credit card transaction slip is not subject to judicial notice under Evidence Code sections 451 or 452.

Ruling on Motion for Class Certification

Plaintiff's Motion for Class Certification is granted.

Class certification is appropriate upon a showing by the party seeking class treatment of "the existence of an ascertainable and sufficiently numerous class, a well-defined community of interest, and substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Code of Civil Procedure section 382; Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021*.) Class certification limits the determination to whether a plaintiff's theory of recovery is amenable to a unitary, classwide adjudication. (*Ghazaryan v. Diva Limosines, Ltd. (2008) 169 Cal.App.4th 1524, 1531*.) The court must grant class certification if it determines (1) the class is sufficiently numerous and can be identified from a defendant's records, (2) the class shares predominant questions of fact/law with the named plaintiff, (3) the plaintiff and his/her counsel would adequately represent the class, and (4) class treatment is superior to litigating numerous separate, identical claims. (*Id. at p. 1524*.)

Plaintiff adequately establishes the numerosity and ascertainability of the class. A class is ascertainable if it identifies a group of unnamed plaintiffs with a common set of characteristics sufficient to allow a member of that group to identify him or herself as having a right to recover. (*Estradada v. FedEx Ground Package System, Inc. (2007) 154 Cal.App.4th 1, 14*.) The trial court looks to the class definition, the size of the class, and the means of identifying class members in determining whether the class is ascertainable. (*Bufil v. Dollar Fin. Grp., Inc. (2008) 162 Cal.App.4th 1193, 1206-1207*.) Plaintiff's proposed class consists of consumers who engaged in credit card transactions with defendant between January 17, 2013 and January 31, 2014 for which defendant utilized credit card transaction forms containing preprinted spaces designated for the customers' personal information, specifically their telephone numbers. The size of the proposed class is relatively large, as defendant admits that thousands of credit card transactions were processed during this time period. The proposed class is also sufficiently defined so as to allow a member of the class to identify him or herself.

Defendant argues that plaintiff has not identified an appropriate method by which all of the potential class members will be notified of the pendency of this action. However, the court has yet to take evidence and rule on the issue of adequacy of notice, and need not make such a determination in order to certify the class. In any event, class members are entitled to notice reasonably calculated to apprise them of the action, and plaintiff does not bear the burden of establishing the ability to give perfect notice for purposes of this motion. (*Cal. Rules of Court, rule 3.766(f).*)

Plaintiff also establishes a community of interest. The "community of interest" element encompasses three factors: (1) the predominance of common questions of law or fact, (2) class representatives with claims or defenses typical of the class, and (3) class representatives who can adequately represent the class. (*Brinker Restaurant Corp. v. Superior Court (2012) 53 Cal.4th 1004, 1021.*) A court examines the allegations of the complaint and supporting declarations to determine whether the legal and factual issues present allow for resolution in a single class proceeding and a class will be certified even if individual members must prove their damages. (*Id. at pp. 1021-1022.*) The legal and factual issues involved in this action are straightforward, simply involving whether customers of defendant who used their credit cards at the restaurant within the designated time frame were presented with a credit card transaction form containing a preprinted space for filling in the customer's phone number, in violation of Civil Code section 1747.08(a)(3).

Plaintiff's claim is typical of the class, and his declaration, submitted in support of the motion, establishes his understanding of his obligations as a class representative, and the ability to adequately represent the class. Further, there is sufficient evidence to show that plaintiff's counsel would adequately represent the class based on their experience with class action litigation.

Finally, the evidence presented to the court establishes substantial benefit from class certification. Civil Code section 1747.08 provides for a civil penalty not to exceed $250 for the first violation of the statute, and not to exceed $1,000 for each subsequent violation, to be assessed and collected in a civil action brought by credit card user, Attorney General, district attorney or city attorney. A class action would offer consumers in the class a means of reasonably recovering modest individual damages, and would aid the court by avoiding the burden of multiple litigations involving identical claims.

Defendant argues that it has a valid defense to the action under Civil Code section 1747.08(e), as it can show that the violations were not intentional and resulted from a bona fide error. While defendant urges the court to determine at this stage whether the action lacks merit pursuant to Civil Code section 1781(c), the statute, by its terms, requires a noticed motion. The merits of defendant's defense to the action are not a proper consideration on a motion for class certification. (*Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429, 447.*)

Defendant argues that neither plaintiff nor other class members will be able to show they were damaged, pointing to Civil Code section 1781(a) which permits a consumer to bring a class action on behalf of himself and others only if an unlawful method, act or practice proscribed under Civil Code section 1780 has caused damage to the consumers. While trial courts have

been directed to apply the procedural requirements of section 1781 to a request for class certification, defendant cites to no authority supporting the argument that section 1781(a) may be applied to actions not brought under the Consumers Legal Remedies Act. A determination of damage suffered by plaintiff and other potential class members goes to the sufficiency of the claims and merits of the defense, which are not appropriate considerations on a motion for class certification. (*See Linder v. Thrifty Oil Co., supra, 23 Cal.4th at 437, 447.*)

Finally, defendant objects to the proposed class definition on the grounds that there is no evidence that the objectionable credit card form was in use for the entirety of the period between January 17, 2013 and January 31, 2014, and because the proposed class is broader than warranted because it includes anyone who was given a credit card receipt with a preprinted space for filling in any "personal identification information" as opposed to merely a telephone number. In support of the time period specified by the proposed class definition, plaintiff notes that it is undisputed that he was provided with a credit card transaction form with a preprinted space for filling in his telephone number on August 7, 2013. Thomas Turner, a principal of defendant's general partner, states that prior to being made aware of this litigation, he was unaware that the preprinted space for telephone numbers was present on credit card transaction forms issued by defendant, or that such practice violated California law. (Declaration of Thomas A. Turner, ¶ 12.) Upon learning of this litigation, he immediately contacted Custom Business Solutions, Inc. (CBS), the company that had installed the Point of Sale system used by defendant, and received instruction regarding how to remove the reference. This was done on January 31, 2014. (*Id.* at ¶ 13.)

Mr. Turner claims ignorance regarding whether or not the preprinted space was present on credit card transaction receipts prior to August 7, 2013. (Declaration of Thomas A. Turner, ¶ 14.) Defendant suggests that because CBS had regular access to the Point of Sale system software, it had the ability to add or remove the preprinted space at its whim. However, no credible evidence is presented to suggest that CBS ever had cause to make changes to the information included on credit card transaction form receipts provided to defendant's customers. In the absence of any evidence to the contrary, it is reasonable to conclude that the credit card transaction form which included a preprinted space for customers' phone numbers was in use at least from January 17, 2013 until January 31, 2014, when finally modified by Mr. Turner. (Deposition of Thomas A. Turner at 23:9-12.)

However, the court agrees that the plaintiff's proposed definition of the class should be modified slightly, as it currently proposes to include customers presented with a form containing designated spaces for filling in any personal identification information of the cardholder. Therefore, based on the allegations of the complaint, and the evidence presented in connection with the instant motion, the court certifies the class as follows:

> ALL CALIFORNIA CONSUMERS WHO ENGAGED IN A CREDIT CARD TRANSACTION WITH DEFENDANT THE GAR WOOD RESTAURANT, A CALIFORNIA LIMITED PARTNERSHIP, FOR WHICH DEFENDANT UTILIZED A CREDIT CARD TRANSACTION FORM THAT CONTAINED PREPRINTED SPACES DESIGNATED FOR FILLING IN THE TELEPHONE

NUMBER OF THE CARDHOLDER FROM JANUARY 17, 2013 TO JANUARY 31, 2014.

8. S-CV-0034273 Griggs, William, et al vs. Centex Homes, et al

Defendants' Motion to Stay Action Pending Plaintiffs' Compliance With Civil Code Sections 895 *et seq.* is granted.

Civil Code sections 895, *et seq.* (the Right to Repair Act) establishes procedures and requirements for construction defect actions relating to homes built on or after January 1, 2003. Pursuant to Civil Code section 910, certain prelitigation procedures are required prior to the filing of an action, and under Civil Code section 930(b), a defendant may move to stay pending litigation proceedings until compliance with such prelitigation procedures is satisfied. The parties do not dispute that such prelitigation procedures were not followed in this action. Plaintiffs argue that the Right to Repair Act does not apply to this action because they previously dismissed their third cause of action for violation of building standards under the Right to Repair Act, and pursuant to the holdings of *Liberty Mutual Insurance Company v. Brookfield Crystal Cove LLC* (2013) 219 Cal.App.4th 98 (*Liberty Mutual*) and *Burch v. Superior Court* (2014) 223 Cal.App.4th 1411 (*Burch*).

The court in *Liberty Mutual* noted that the Right to Repair Act was a direct response to the holding in *Aas v. Superior Court* (2000) 24 Cal.4th 627, where the California Supreme Court held that in the absence of actual property damage, construction defects in residential properties were not actionable in tort. Thus in *Liberty Mutual* and *Burch,* the Court of Appeal held that common law claims for construction defects that caused actual property damage (as opposed to only economic damages like the cost of repair or diminution of value) were not abrogated by the Right to Repair Act, and that common law remedies remained. The cases do not hold, as plaintiffs suggest, that homeowners may elect to bring any action for construction defect damages either through common law causes of action, or under the Right to Repair Act. In this case, plaintiffs seek damages based on their cost to repair defects, diminution of value of their properties, and loss of use and relocation expenses. (FAC at 25:23-26:2.) In other words, plaintiffs seek to recover both economic damages and the actual property damages contemplated by *Liberty Mutual* and *Burch*.

Neither *Liberty Mutual* nor *Burch* dealt with a motion to stay based on the failure to comply with prelitigation procedures where plaintiffs also assert claims which fall exclusively under the Right to Repair Act. In *Liberty Mutual*, the Court of Appeal addressed the statute of limitations applicable to a subrogation action, where an insurer sought to recover actual damages of hotel and relocation expenses incurred while damage to the insured's home was repaired. In *Burch,* the Court of Appeal reversed the trial court's order granting summary adjudication on the plaintiff's common law claims for damages because, to the extent such claims alleged actual property damage, the Right to Repair Act was not the exclusive remedy.

Plaintiffs' action alleges violations of the standards set forth in Civil Code section 896, despite the fact that they have dismissed their third cause of action. To the extent plaintiffs seek economic damages based on such violations, their claims are subject to the Right to Repair Act.

Accordingly, the prelitigation procedures set forth in Civil Code sections 910, *et seq.* are mandatory. *Darling v. Superior Court* (2012) 211 Cal.App.4th 69, 76. Further, plaintiffs contractually agreed that a claim for damages arising out of the construction of the subject homes resulting from a violation of any of the standards set forth in the Right to Repair Act. (Winter decl., Exh. A, ¶ 14.3.)

This action will be stayed pending plaintiffs' compliance with Civil Code sections 895 *et seq.* **An OSC re Status of Stay is set for August 25, 2015 at 11:30 a.m. in Department 40.**

9. S-CV-0034423 Vincent, John, et al vs. Marcus, Jonathan

Plaintiff's Motion to Compel Defendant's Responses to Form Interrogatories and Request for Production of Documents, and to Deem Admissions, is denied without prejudice.

This motion was originally calendared for January 27, 2015. However, due to issues regarding the correct address of record for defendant, the matter was continued and plaintiffs were instructed to serve notice of the continued hearing date to defendant. As nothing further has been filed in this matter, it appears that notice was not provided to defendant as required. Accordingly, the motion is denied.

10. S-CV-0034683 Hitt, Theresa Elaine, et al vs. Fehrenbacher, George Dr.

Defendant's Demurrer to Complaint is overruled.

A party may demur to a complaint where the pleading fails to state facts sufficient to constitute a cause of action. Code Civ. Proc. § 430.10(e). A demurrer tests the legal sufficiency of the pleadings, not the truth of the allegations or accuracy of the described conduct. *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 787. The allegations of the complaint are deemed true no matter how improbable the allegations may seem. *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604. The complaint must be "liberally construed, with a view to substantial justice between the parties." Code Civ. Proc. § 452. If the complaint pleads facts entitling the plaintiff to relief, erroneous labels should be ignored. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.

The complaint, read as a whole, pleads facts sufficient to state a cause of action for professional negligence against defendant. Further, the factual allegations of the complaint do not disclose, as a matter of law, that defendant is entitled to a Good Samaritan defense under Business and Professions Code section 2396. *See Bryant v. Bakshandeh* (1991) 226 Cal.App.3d 1241 (trier of fact must determine whether doctor had a reasonable, good faith belief that he was responding to an emergency situation when he performed the requested procedures).

Defendant shall file and serve his answer to the complaint by no later than March 13, 2015.

11. S-CV-0034773 Leong, Tristan, et al vs. Burton, Keith

The Petition to Approve Compromise of Disputed Claim is denied.

Plaintiff requests that the medical lien asserted by Kaiser Foundation Health Plan, Inc. (Kaiser) be expunged in its entirety, or reduced to $19,800, or otherwise that the petition be denied so that plaintiff may proceed against defendant for the full value of his damages. Kaiser opposes the petition due to the fact that it extended medical benefits in the amount of $99,754.42 on plaintiff's behalf. Kaiser requests that the court order plaintiff to settle Kaiser's medical reimbursement for the amount of $33,333.33, representing one-third of the proposed settlement agreement between plaintiff and defendant.

In light of Kaiser's objections, and the significant difference between the proposed reimbursement to Kaiser and the actual benefits extended, the petition is denied. The court declines at this stage in the proceedings to order plaintiff to settle the reimbursement to Kaiser for $33,333.33 per Civil Code section 3040. As the settlement was contingent upon court approval of the instant petition, there is currently no final judgment, compromise or settlement agreement pursuant to Civil Code section 3040(c).

If oral argument is requested, appearance of the minor at the hearing is excused.

12. S-CV-0034799 Miller, Chris, et al vs. NR Homes, Inc., et al

The Motion to Compel Production was continued to March 24, 2015 at 8:30 a.m. in Department 40.

13. S-CV-0034909 Abaco, Fernando, et al vs. Lewis, Kaitlin E., et al

Defendant County of Placer's unopposed Motion to Compel Plaintiffs' Statement of Damages, Responses to Interrogatories, and Responses to Request for Documents, is granted.

Plaintiffs shall serve a statement of damages, and verified responses to Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, without objections, by no later than March 20, 2015.

Defendant's request for sanctions is denied. The notice of motion fails to set forth the statutory authority for the request. Code Civ. Proc. § 2023.040; Local Rule 20.2.4(E). Further, the motion was unopposed. Code Civ. Proc. §§ 2030.290(c), 2031.300(c). Although California Rules of Court, rule 3.1348(a) purports to authorize sanctions if a motion is unopposed, the court declines to do so, as the specific statute governing this discovery authorizes sanctions only if the motion was unsuccessfully made or opposed. Any order imposing sanctions under the California Rules of Court must conform to the conditions of one or more of the statutes authorizing sanctions. *Trans-Action Commercial Investors, Ltd. v. Firmaterr Inc*. (1997) 60 Cal.App.4th 352, 355.

14. S-CV-0034941 Ackles, Michael vs. J.D. Tomlinson & Co.

Defendant's Demurrer to First Amended Complaint is sustained with leave to amend as to plaintiff's first, third and fourth causes of action.

Plaintiff's first cause of action for breach of oral/written contract fails to state a valid claim. Plaintiff fails to attach the alleged written contract, or to set forth its terms verbatim, or plead the purported contract according to its legal effect. It is unclear what portions of any purported contract are written, and what portions are oral. The terms of the purported oral contract are not clearly alleged.

Plaintiff's third cause of action for intentional tort fails to state a valid claim, and is uncertain. The allegations stated with respect to this cause of action do not support a claim for intentional tort, and it is unclear from the allegations exactly what cause of action plaintiff seeks to allege.

Plaintiff's fourth cause of action for fraud fails to state a valid claim. Plaintiff fails to allege that the representations made by defendant were known to be false when made, or that defendant had no reasonable grounds for believing the representations were true. Plaintiff fails to plead justifiable and detrimental reliance on the allegedly false representations, as he only alleges actions taken after he learned of the damage to the vehicle. Plaintiff fails to plead damages with requisite specificity.

Defendant's Motion to Strike is granted with leave to amend. The court strikes references in the complaint to a cause of action for "Motor Vehicle", and plaintiff's requests for general damages, loss of earning capacity, punitive damages and attorneys' fees. The first amended complaint fails to allege facts supporting these references and prayers for damages.

Plaintiff is given leave to amend the complaint. Any amended complaint shall be filed and served by no later than March 20, 2015.

15. S-CV-0034953 Geryon Ventures, LLC vs. Slawsby, Denis R. et al

The Application of Loren Molever to Appear as Counsel Pro Hac Vice is granted.

16. S-CV-0035203 Silva, Sandra vs. Springfield, David, et al

The Motion to be Relieved as Counsel by Allan R. Frumkin, Law Offices of Allan R. Frumkin, Inc., is denied without prejudice. The motion was served with insufficient notice time. Code Civ. Proc. § 1005(b).

17. S-CV-0035447 Larson, Arrika vs. Larson, Kirk Whitney

Defendant's Motion to Set Aside Default is denied. A defendant may seek discretionary relief from default upon a timely showing of mistake, surprise, inadvertence or excusable neglect. Code Civ. Proc. § 473(b). Defendant's declaration fails to establish mistake, surprise,

inadvertence or excusable neglect by a preponderance of the evidence pursuant to Code of Civil Procedure section 473(b). *See Kendall v. Barker* (1988) 197 Cal.App.3d 619, 624. Defendant states that he believed he had until March to file paperwork in response to the complaint. This belief was not reasonable given that the summons clearly notifies defendant that he has 30 calendar days following service to file a written response with the court. Accordingly, the motion is denied.

These are the tentative rulings for civil law and motion matters set for Tuesday, February 24, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, February 23, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.